ORIGINAL

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of	)	
	)	
Petition of the Alliance for Public Technology	)	RM No. 9244
Requesting Issuance of Notice of Inquiry and	)	
Notice of Proposed Rulemaking to Implement	)	
Section 706 of the 1996 Telecommunications Act	)	

COMMENTS OF AT&T CORP.

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April 13, 1998

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SUMMARY

The Alliance for Public Technology ("APT") asks the Commission in the instant Petition to relieve the incumbent local exchange carriers ("ILECs") from the unbundling, pricing and resale requirements of the Telecommunications Act of 1996, allegedly to encourage the ILECs to invest in local infrastructure to provide advanced telecommunications services in "the last mile" to the home. APT focuses on the purported failure of TELRIC pricing to encourage facilities-based competition, and urges the Commission to retreat from the requirement of TELRIC-based pricing. Among its other proposals, APT urges the Commission to apply the unbundling and resale requirements only to the ILECs' networks as they existed as of August 8, 1996, and to drop unbundling and TELRIC-based pricing for new advanced capabilities offered after that date. APT further recommends that the Commission phase out the UNE/TELRIC regime in its entirety for the RBOCs after they receive in-region long distance authority.

First, APT's request that the Commission exempt the ILECs from their statutory obligations of TELRIC pricing is entirely misplaced. Forward-looking, cost-based pricing is a requirement of the Telecom Act, and has been a goal equally pursued by many state commissions since the Iowa Utilities Board decision. APT's request plainly exceeds the Commission's power to grant. In all events, as AT&T demonstrates here, TELRIC-based pricing is an entirely appropriate standard for monopoly services.

Second, APT would have the Commission relieve the ILECs of their fundamental unbundling and resale obligations -- embodied in Section 251(c) of the Telecom Act -- before they open their local markets to competition even for traditional telephony services. This proposal is vastly premature, particularly because "advanced" services and traditional telephony services each rely on the same monopoly network elements. The ILECs' reluctance to provide

those network elements to CLECs even for traditional POTS services is the strongest evidence that relieving the ILECs of their statutory obligations -- even as to "advanced" services" -- will only entrench their market power.

These and the remaining proposals advanced by APT in its petition amount to nothing less than a wholesale abandonment of the statutory requirements of the Telecom Act; the recommendations would relieve the ILECs of virtually every tool adopted by Congress to pry open the local exchange to competition. And, ironically, they would not provide the incentives that APT believes would arise on the part of the ILECs to invest in advanced telecommunications services to residential consumers. Even if much of APT's petition were not foreclosed by the Commission's lack of statutory authority to entertain its requests, the Commission should spend its valuable time and resources enforcing the ILECs' obligations to open their local markets to competition, and not considering ways for them to avoid this critical responsibility.

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COMMENTS OF AT&T CORP.

Pursuant to the Public Notice released on March 12, 1998, AT&T Corp. ("AT&T") respectfully submits its Comments in opposition to the Petition of the Alliance for Public Technology ("APT") for regulatory and other relief for incumbent local exchange carriers ("ILECs"), allegedly to encourage their deployment of advanced telecommunications capabilities. APT's request, if granted, would dismantle the carefully crafted statutory regime adopted by the Congress, which is appropriately premised on the development of meaningful competition in the local exchange as the catalyst for development not only of competitive traditional services, but also of advanced telecommunications services for homes and businesses.

I. INTRODUCTION

In its Petition, APT raises the concern (p. 5) that the advent of local competition will bring with it a focus on the more lucrative business customer, to the detriment of the consumer market. In order to encourage both ILECs and competitive local exchange carriers ("CLECs") to deploy high-speed capability in "the final mile to the home," APT urges the Commission to remove a vast array of statutory and regulatory requirements imposed on the ILECs. Relying on the "concept" of Section 254 of the

Telecom Act to include advanced telecommunications services in the definition of "universal service" when they become ubiquitous and essential, and on Section 706 of the Act which, according to APT (p. 7), "commands the Commission and the states to provide such signals for innovation of advanced telecommunications capabilities," APT urges the Commission to (1) relieve ILECs of their obligations to make unbundled network elements for advanced network services available to CLECs and to sell CLECs advanced telecommunications services for resale to end users; (2) phase out the unbundled network element ("UNE") obligation in its entirety; and (3) eliminate a host of regulatory requirements applicable to ILECs in the areas of pricing, depreciation, and price cap regulation.

APT's petition mirrors substantially the concurrently filed petitions of Bell Atlantic, US West and Ameritech, each of which seeks similar regulatory forbearance purportedly to enable those RBOCs to offer high-speed data services, on both an intra- and interLATA basis, ostensibly to meet the demands of residential customers.[1] Although APT is a nonprofit consumer advocacy group, its sponsors include Bell Atlantic, Pacific Bell and the US Telephone Association, and its affiliates include Ameritech Corporation, BellSouth Corporation, GTE, SBC Communications and US

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[1] In the Matter of Petition of Bell Atlantic Corporation for Relief from Barriers to Deployment of Advanced Telecommunications Services, CC Docket No. 98-11, filed January 26, 1998; In the Matter of Petition of U S West Communications, Inc. for Relief from Barriers to Deployment of Advanced Telecommunications Services, CC Docket No. 98-26, filed February 25, 1998; In the Matter of Petition of Ameritech Corporation to Remove Barriers to Investment in Advanced Telecommunications Capability, CC Docket No. 98-32, filed March 5, 1998.

West.[2] Given this influence, it is not surprising that the APT petition (pp. 8-12) faults the Commission for relying on competitive market forces to bring innovative services to the market, and urges the Commission to "rehabilitate itself" for its "mistaken" reliance on sale of UNEs at TELRIC prices to generate local competition. APT instead urges the Commission to ignore its responsibilities under the Telecom Act and exempt ILECs from their statutory obligations of resale, unbundling and cost-based pricing as a means to extend the benefits of advanced technology services to small and rural communities.

AT&T demonstrates in these Comments that APT's proposals should not be pursued in the context of either a Notice of Inquiry or a separate Notice of Proposed Rulemaking because their effect would be to nullify the central pro-competitive goal of the Telecommunications Act. In Section II below, AT&T shows that there is no merit to APT's claim that TELRIC pricing (or any other requirement of the Telecom Act) is discouraging innovation or is otherwise an inappropriate requirement for monopoly LECs. In Section III below, AT&T explains that each of the specific proposals suggested by APT is flawed as a matter of law and sound public policy.

II. APT'S ARGUMENT THAT TELRIC PRICING DISCOURAGES COMPETITION IS SERIOUSLY FLAWED

APT asks the Commission to forego the broad pro-competitive directives of the Telecommunications Act in order to meet what it views as the more compelling but narrow directive of Section 706 to encourage the deployment of advanced telecommunications services. According to APT (pp. 8-14), local competition is

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[2] APT News, Volume IX, Number 2, February 1998.

emerging so slowly because of the Commission's policy of TELRIC pricing of UNEs which, according to APT, discourages facilities-based competition, on the mistaken assertion that greater pricing flexibility and other statutory and regulatory relief for ILECs will provide them with appropriate incentives to offer advanced services at cost-based rates.

As a threshold matter, this issue would be completely academic if the local exchanges were fully competitive. In a truly competitive environment, marketplace forces would drive prices to cost-based levels and encourage investment in all kinds of advanced services that customers demand. However, the ILECs clearly retain monopoly control over the local network, and it is the very same local network that is being used for both traditional telephony and advanced telecommunications services. The broadband services that the ILECs currently, or plan to offer utilize the customer's existing twisted copper pair loops and can do so with sufficient bandwidth to support both advanced services as well as the underlying POTS services. As long as the ILECs continue to control those loops they have an inherent, unmatchable cost and marketplace advantage. These advantages of scope and scale -- and the resulting lower unit costs that the incumbents enjoy -- are the very monopoly benefits that Section 251 of the Telecom Act requires be shared with CLECs.[3]

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[3] See First Report and Order, ¶ 679 ("Congress recognized in the 1996 Act that access to the incumbent LECs' bottleneck facilities is critical to make meaningful competition possible. As a result of the availability to competitors of the incumbent LEC's unbundled elements at their economic cost, consumers will be able to reap the benefits of the incumbent LECs' economics of scale and scope, as well as the benefits of competition").

In fact, the fallacy of APT's TELRIC argument is self-evident. TELRIC pricing requirements cannot be blamed for the failure of ILECs to invest in advanced technologies, in particular advanced services in smaller communities. Since the Telecom Act was passed in 1996, no ILEC has met its obligation to price its network elements at TELRIC levels. Notwithstanding their maintenance of above-economic-cost pricing, ILEC implementation of advanced data services has been slow, and such deployment has occurred – if at all – in urban areas. The ILECs' dismal history of deployment of ISDN, which was a working technology for 20 years before it became widely commercially available, is illustrative of the ILECs' holding back of advanced services, quite independent of TELRIC pricing.[4]

APT appears to believe that the Commission has mandated TELRIC pricing (and that this is bad policy). In fact, the Telecom Act itself that requires such efficient, cost-based pricing to make the goal of local competition available. Moreover, since the Iowa Utilities Board decision[5] has substantially eroded for now the

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[4] See In the Matter of Usage of the Public Switched Network by Information Service and Internet Access Providers, CC Docket No. 96-263, Comments of Internet Access Coalition, filed March 24, 1997, p. 23. See also "Telco & Cable Internet Strategies: The Dawn of Carrier-class Access," 1997 Jupiter Strategic Planning Services/IT47 ("Jupiter Study"), p. 31 ("Currently, the RBOCs have a stranglehold on high-speed Internet access via leased lines by virtue of their ownership of the local loop. The RBOCs will have little reason to invest in ADSL for business use until businesses have options for high-speed access besides leasing T1 and ISDN lines. . . . Moreover, high demand for second phone lines in the residential market - fueled in part by Internet access - provides a strong disincentive for RBOCs to offer ADSL to consumers, because ADSL offers simultaneous voice and data traffic").

[5] Iowa Utilities Board v. FCC, 120 F.3d 753 (8th Cir., 1997), on rehearing, 1998 U.S. App. LEXIS 1043, cert. granted, 118 S. Ct. 879 (1998).

Commission's role and authority to make pricing decisions, many state commissions have stepped in, taken an independent look at what steps are needed to promote local competition and serve consumer interests, and have concluded that TELRIC-like pricing is appropriate.[6] Thus APT's attack on the Commission's role in pricing of network elements is misplaced -- it is, in effect, an attack on the Congressionally-mandated pricing scheme embodied in the Telecom Act and on the actions of the state commissions in adopting TELRIC-based pricing to implement the Telecom Act's requirements.

In any event, APT's substantive criticisms of TELRIC as a pricing standard are simply wrong. TELRIC-based rates are not "cut-rate" or non-compensatory to the ILEC.[7] Rather, these rates represent the amount that would be charged by an

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[6] See, e.g., Opinion and Order Setting Rates for First Group of Network Elements (Opinion No. 97-2), Joint Complaint of AT&T Communications of New York, Inc., MCI Telecommunications Corporation, WorldCom, Inc. d/b/a LDDS WorldCom and the Empire Association of Long Distance Telephone, Inc. Against New York Telephone Company Concerning Wholesale Provisioning of Local Exchange Service by New York Telephone Company and Sections of New York Telephone Company's Tariff No. 900, et al., NY PSC Case No. 95-C-0657, et. al. (issued April 1, 1997); In the Matter, On the Commission's Own Motion, to Consider the Total Service Long Run Incremental Costs and to Determine the Prices of Unbundled Network Elements, Interconnection Services, Resold Services, and Basic Local Exchange services for Ameritech Michigan, Case No. U-11280 (Michigan PSC) (issued July 14, 1997); Petition of MFS Communications Company, Inc. for Arbitration of Pricing of Unbundled Loops, et al., Docket No. 16189, Arbitration Award (Texas PUC) (issued Dec. 19, 1997).

[7] See, e.g., In the Matter of Implementation of the Local Competition Provisions in the Telecommunications Act of 1996 and Interconnection Between Local Exchange Carriers and Commercial Mobile Radio Service Providers, CC Docket Nos. 96-98 and 95-185, First Report and Order, FCC 96-325 (rel. August 8, 1996) ("Interconnection Order"), § 679 ("Adopting a pricing methodology based on forward-looking, economic costs best replicates, to the extent possible, the conditions of a competitive market. In addition, a forward-looking cost methodology

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efficient competitive supplier of the service, and incorporate an appropriate risk-adjusted rate of return to the carrier.[8] In contrast, a rate set above TELRIC would either discourage all entry whatsoever (because a CLEC that is starting out in the market would not have the customer base to justify a full facilities build-out and would not be able to set competitive prices with such above-market UNE rates), or would permit the ILEC with market power to restrict supply and earn monopoly rents. These options represent precisely the opposite of the sound economic and competition policy embodied in the Telecom Act.

Neither APT, nor the ILECs in any filing before this Commission, have presented any showing that the incumbent carriers cannot recover their costs, including a fair rate of return, for broadband access services. To the contrary, in light of the strong demand for these services asserted by APT, its stands to reason that ILECs could garner healthy revenues -- and healthy returns -- by offering broadband services and other high-capacity services at cost-based rates to CLECs. The ILECs are able to provide all of the customer's telecommunications needs over the customer's existing local loop -- once

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> reduces the ability of an incumbent LEC to engage in anti-competitive behavior. . . . As a result of the availability to competitors of the incumbent LEC's unbundled elements at their economic cost, consumers will be able to reap the benefits of the incumbent LECs' economies of scale and scope, as well as the benefits of competition. Because a pricing methodology based on forward-looking costs simulates the conditions in a competitive marketplace, it allows the requesting carrier to produce efficiently and to compete effectively, which should drive retail prices to the competitive levels.").

[8] Id. at §§ 686-689.

conditioned and equipped with electronics to provide broadband services. Thus, any "risk" to the ILECs to upgrade those loops with the electronics necessary to provide broadband services -- which they can accomplish on a customer-by-customer basis once a customer orders the broadband service -- is at most minimal.

The unwillingness of the ILECs to comply with the mandates of the Telecommunications Act and open their networks and services to their potential competitors is pervasive and well-documented, including their refusal to offer the sale of UNEs at reasonable prices for the provision of traditional telephony services, with adequate operational support systems, and with viable collocation opportunities. AT&T has extensively documented the recalcitrance of Bell Atlantic, US West and Ameritech in facilitating competitive entry in their respective regions, and refers the Commission to those Comments.[9] APT would now have the Commission provide the ILECs with a permanent reward for their success in keeping competitors out of the local market by eliminating the pricing rules that offer competitors the only reasonable means of market entry, and thus enable the ILECs to extend their existing monopolies into the next

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[9] Comments of AT&T Corp., In the Matter of Petition of Bell Atlantic Corporation for Relief from Barriers to Deployment of Advanced Telecommunications Services, CC Docket No. 98-11, filed April 6, 1998 ("AT&T's Bell Atlantic Comments"), pp. 16-19; Comments of AT&T Corp., In the Matter of Petition of U S West Communications, Inc. for Relief from Barriers to Deployment of Advanced Telecommunications Services, CC Docket No. 98-26, filed April 6, 1998 ("AT&T's US West Comments"), pp. 7-9; and Comments of AT&T Corp., In the Matter of Petition of Ameritech Corporation to Remove Barriers to Investment in Advanced Telecommunications Capability, CC Docket No. 98-32, filed April 6, 1998 ("AT&T's Ameritech Comments"), pp. 10-11.

generation of local services.[10] APT has offered no basis for the Commission to pursue such action.

III. EACH OF THE SPECIFIC PROPOSALS SUGGESTED BY APT IS FORECLOSED BY THE TELECOM ACT AND CONTRARY TO SOUND PUBLIC POLICY GOALS.

As demonstrated below, each of the specific proposals suggested by APT would either violate the Commission's statutory authority or contravene the Telecom Act's sound public policy goals, or both.

A. Apply The 251(c) Regime Only To The Existing ILEC Network.

APT's request (pp. 15-19) that the Commission make the unbundling and resale requirements embodied in Section 251(c) applicable only to the ILECs' networks as they existed as of August 8, 1996 -- and not to future advanced capabilities – is misguided. The Commission has no power to grant APT's request.

As to resale, Section 251(c)(4)(A) of the Telecommunications Act on its face applies to "any telecommunications service that the carrier provides at retail to subscribers who are not telecommunications carriers." The Commission has interpreted the plain meaning of Section 251(c)(4)(A) as a general obligation on the ILECs to make all of their retail services available at wholesale rates, and accordingly has required

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[10] APT's assertion (p. 12, n.11) that unbundling and resale "might deter innovation" finds no support in the documents cited by APT. In particular, Dr. Joseph Farrell, in his March 19, 1997 speech, in fact endorsed unbundling as the economically appropriate way to open monopoly markets ("someone who wants to innovate at the switch level, or by loading xDSL onto a regular copper loop, or by offering a different, equally remunerative but possibly more appealing pricing plan to end-users, probably shouldn't have to build a lot of loops in order to try her idea in the market. . . . Thus it's important for innovation that we make unbundling work.").

ILECs to "establish a wholesale rate for each retail service that: (1) meets the statutory definition of a 'telecommunications service;' and (2) is provided at retail to subscribers who are not 'telecommunications carriers.'"[11] There is no dispute that the advanced services which are the subject of APT's petition (such as ISDN and DSL services) are "telecommunications services." They do not possess any of the elements of "information services" and, to the extent that they are offered today, they are consistently provided under state tariffs by the ILECs.[12]

As to sale of UNEs, Section 251(c)(3) similarly obligates the ILECs to "provide . . . nondiscriminatory access to network element on an unbundled basis. . . ." "Network element," in turn is defined in Section 3(a)(45) as "a facility or equipment used in the provision of a telecommunications service." Thus the statute on its face applies to all telecommunications services, and does not allow for the limitations suggested by APT. Moreover, there is no "grandfather" limitation on either the unbundling or resale obligations of Section 251, restricting their applicability only to services existing as of any date certain. Thus the Commission has no statutory authority to forbear from the

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[11] Interconnection Order at ¶ 871 (citations omitted).

[12] See, e.g., US West Advanced Communication Services Tariff (Utah), effective September 2, 1997, Section 8, p. 1 (xDSL service); Southwestern Bell Telephone Company Integrated Services Tariff (Texas), effective May 22, 1996, Section 3 (Digiline Service).

application of Section 251(c) to these telecommunications services, as APT would have it do.[13]

APT's suggestion (p. 16) that there is no "downside" to the Commission exempting these new services from Section 251 requirements is wrong. As noted above, the advanced services that are the subject of this petition (e.g., ISDN; DSL) are provided over the same twisted copper pairs that currently run to the home for the provision of traditional telephony services. By permitting the ILECs to offer their advanced services over their existing loops to their existing customer base outside of regulatory controls and competitive safeguards, the Commission would be giving the ILECs an unchecked capability to provide all telecommunications services to the home on a deregulated basis. This would enable the ILECs to lock up not only the marketplace for new, emerging services, but for traditional POTS services as well.

APT's claim (p. 16) that CLECs have not been demanding access to advanced telecommunications capabilities is not correct. The loops that CLECs such as AT&T have been demanding are the same loops used to provide both traditional and advanced services. Denial of access to those loops for traditional services -- a problem for CLECs nationwide -- also constitutes denial of access to those loops for advanced

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[13] See Section 10 of the Telecommunications Act, 47 U.S.C. § 160(d) ("the Commission may not forbear from applying the requirements of section 251(c) or 271 under [section 10(a)] until it determines that those requirements have been fully implemented"). See also AT&T's Bell Atlantic Comments, pp. 4-12.

services. Indeed, AT&T has fully documented its efforts to obtain digital-capable loops from ILECs such as Bell Atlantic.[14]

As AT&T also demonstrated in its Comments on the petitions of Bell Atlantic, US West and Ameritech, AT&T has been unable to purchase the unbundled loops even for traditional telephony services because of lack of operational support systems and the failure of the RBOCs to offer those loops at reasonable prices. To provide DSL service carriers must be able to purchase conditioned loops, and the RBOCs have consistently refused to offer conditioned loops to AT&T.[15] Other CLECs have also documented to the Commission their lack of success in obtaining conditioned loops and collocation to provide advanced services.[16] Because the ILECs have been so grossly derelict in providing the basic building blocks for traditional telephony, which include the same building blocks needed to provide advanced services, APT's claim that exempting the advanced services themselves from the unbundling and resale obligations would not harm competition is plainly wrong.

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[14] See AT&T's Bell Atlantic Comments, pp. 16-19. See also Comments of Covad Communications Company, pp. 8-9 ("In its experiences with several RBOCs, Covad has discovered (to its dismay) that incumbent LECs are routinely not making loops certified to support DSL services available to CLECs. Indeed, Bell Atlantic does not provide *any* CLEC with access to loops certified to support ADSL and HDSL services in *any* of its service territories, despite the FCC's clear decision on this subject"); Comments of DSL Access Telecommunications Alliance, p. 16 ("DSL-capable loops are regularly 'unavailable' to competitors. Similarly, DSL competitors are regularly rebuffed in their attempts to obtain collocation").

[15] See, e.g., AT&T's Bell Atlantic Comments, pp. 17-18; AT&T's US West Comments, pp. 7-8.

[16] See, e.g., Comments of Covad Communications Company, pp. 13-14.

B. Phase Out The UNE/TELRIC Regime

APT's suggestion (pp. 19-21) that UNE/TELRIC requirements should be phased out in their entirety after an RBOC receives in-region long distance authority in a given state will neither promote competition in that state for traditional or advanced telecom services, nor ensure that customers obtain optimum services at cost-based prices from the ILECs. First, APT's proposal finds no support in the Telecom Act, which imposes, under Section 251(c)(3), the duty of providing nondiscriminatory access to unbundled network elements at just and reasonable rates on all incumbent local carriers. This requirement has no sunset provision, and Commission has no power to forbear from enforcing that obligation, which is in essence what APT is requesting here. To the contrary, the Commission may not forbear from the interconnection, unbundling, resale, collocation and other pro-competitive requirements imposed on ILECs until it determines that those requirements have been fully met by the requesting ILEC.[17] Any such request is vastly premature, because the ILECs are far from meeting their threshold duty now. The Commission's scarce resources would be better spent enforcing the statutory mandates to open the local markets, and not debating when it can refrain from enforcing those duties.[18]

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[17] See Section 10(d) of the Telecom Act ("...the Commission may not forbear from applying the requirements of section 251(c) or 271 under subsection (a) of this section until it determines that those requirements have been fully implemented") (emphasis supplied).

[18] APT acknowledges that the Telecom Act does not provide for the sunset of the 251(c) requirements. Because the Commission has not been accorded the power to eliminate the 251(c) requirements, APT's suggestion (pp. 21-22) that the

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APT's suggestion that such a sunset be imposed after an RBOC receives in-region long distance authority is not rational anyway. As noted above, the Telecom Act imposes the Section 251(c) requirements not only on RBOCs, but on all incumbent local carriers. These fundamental duties to open their local networks to competitors is not limited to RBOCs, and is not linked in any way to an ILEC's (including an RBOC's) right to provide in-region long distance service. Thus there is no conceivable or logical connection between the essential ILEC obligations of unbundling and TELRIC pricing and RBOC long distance entry.

C. Deal Effectively With The Embedded (Stranded) Cost Issue

APT's recommendation that the Commission "deal with" the stranded cost issue is premature at best. The ILECs have offered no empirical showing that they in fact have stranded plant; they have provided at most only theoretical arguments regarding the fate of their plant. In any event, the instant petition mitigates against any notion that the ILECs suffer from stranded plant. As noted above, the ILECs make use of the bulk of their existing plant in the provision of ISDN, xDSL and other advanced services.[19] It is in fact counter-intuitive even to raise this issue in the context of the instant petition,

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Commission engage in a "reevaluat[ion of] the need" for the provisions contained in Section 251(c) is a useless exercise. In all events, even if it had the authority to do so (which it does not), it would be inappropriate for the Commission to "set the stage" for relief from requirements that the ILECs to date have been grossly delinquent in complying with since their adoption.

[19] See p. 4, supra.

because as the ILECs deploy more broadband services using such new electronics technologies, they will make more – not less – use of their existing local plant.

Moreover, ILECs have put into service approximately 75 percent of their plant in the past eight years; that is, after incentive (price cap) regulation began.[20] The investment decisions made by ILEC management since that time presumably were based on appropriate incentives to build networks that would meet expected market needs for future applications, as well as with full knowledge that the environment was changing from one which was rate of return regulated to one which would be more lightly regulated. Any potential ILEC future claim for stranded costs recovery must therefore be critically assessed against actual management decisions which were made. They should not be seeking or obtaining a regulatory "safety net" for their market-based investment decisions.[21]

D. APT's Other Recommendations

APT's other recommendations, premised on the inaccurate view that the pro-competitive policies of the Telecom Act have failed (and that the ILECs have done

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[20] See, e.g., Patricia Kravtin, Lee Selwyn and Joseph Laszlo, Reply to Incumbent LEC Claims to Special Revenue Recovery Mechanisms, Appendix B to AT&T Comments, CC Docket No. 96-262 et al, February 14, 1997.

[21] APT's suggestion (p. 22) that the Commission eliminate depreciation regulation which, according to APT, has "called for inordinately long depreciation periods to keep local residential rates low," is also not appropriate. Depreciation is a major cost component for UNE pricing, as well as for access. Until competition provides an effective check on the ability of the monopolist ILECs to raise prices, elimination of depreciation regulation would pave the way for price increases for UNEs and for exchange access, both essential inputs to its wholesale customers.

nothing to slow the pace of competition), are similarly ill-founded. First, APT requests (pp. 25-27) that the Commission encourage pricing reform, including retail price deregulation. However, the Commission has consistently held that pricing reform for ILECs should come only after there is substantial competition in the local market.[22] And the Commission is already addressing these issues in the broad context of access reform, where it has received comments on various pricing flexibility proposals for specific services "when such service is subject to substantial competition."[23] But as the Commission has noted, removing pricing regulation on the ILECs prematurely can squash emerging competition before it can gain a foothold.[24]

APT further recommends (pp. 29-33) that the price cap productivity factor be adjusted to accelerate ILEC investment in new technologies. However, this recommendation does not appear to address APT's purported goal to encourage ILEC investment in advanced services at affordable prices. To the extent that the advanced

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22 See, e.g., In the Matter of Southwestern Bell Telephone Company, Tariff F.C.C. No. 73, CC Docket No. 97-158 (Transmittal No. 2633), Order Concluding Investigation and Denying Application for Review (rel. Nov. 14, 1997), FCC 97-394 ("SWBT Order"), ¶ 52 (only when "robust competition is widespread" should the Commission consider eliminating anomalies between the rules applicable to incumbents and those applicable to new entrants); In the Matter of Access Charge Reform et al, CC Docket No. 96-262 et al,. First Report and Order, FCC 97-158 (rel. May 16, 1997), ¶ 273 ("Throughout the transition to deregulation in the face of substantial competition, we will maintain many safeguards against unjust or unreasonable rates, such as the price cap indices") (emphasis supplied).

23 In the Matter of Price Cap Performance Review for Local Exchange Carriers, CC Docket No. 94-1, Second Further Notice of Proposed Rulemaking, 11 FCC Rcd 858, 918 (1995).

24 See SWBT Order at ¶¶ 49-51.

services that the ILECs would supply are "new" services, the initial price level for these services would be determined solely by the ILEC, and be subject to its unfettered discretion. Moreover, if APT's goal is to make such advanced services broadly affordable to consumers, it should look with suspicion on any relaxation of the price cap productivity factor that would result in even greater freedom for the ILEC to impose monopoly-level pricing.[25]

Finally, APT's suggestion for a broad federal/state policy for encouraging community-driven demand aggregation (pp. 34-41) goes well beyond the Commission's statutory mandate. The Commission is already intensely engaged in a specific, Congressionally mandated program to encourage the development of advanced services throughout the nation -- that program is implementation of the pro-competitive objectives of the Telecom Act. Suggestions such as "technology diffusion funds" and "industry-based funding" fall beyond the Commission's authority and expertise to implement and maintain.[26]

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[25] AT&T has already shown that the X-factor, if anything, should be raised. See, e.g., In the Matter of Access Charge Reform and Price Cap Performance Review for Local Exchange Carriers, CC Docket Nos. 96-262 and 94-1, Petition of AT&T Corp. for Partial Reconsideration of the Commission's X-Factor Order, filed July 11, 1997, p. 8; id., Reply Comments of AT&T Corp., filed February 14, 1997, p. 35.

[26] APT also suggests (pp. 24-25) that the Commission bring the Internet Service Providers ("ISPs") into an access scheme that makes them pay reasonable charges yet affords incentives to invest in high-speed, packet-switched networks. AT&T supports the notion that ISPs, as users of access, should pay their fair share of the costs of that access. To that end, AT&T has consistently urged the Commission to eliminate the "ESP exemption" and to assess cost-based access charges on ESPs. See, e.g., AT&T's Comments on Report to Congress, CC Docket No. 96-45, January 26, 1998, p. 10, n.13. The Commission has ample opportunity, in its Access

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IV. CONCLUSION

For the reasons set forth above, APT's petition should be denied. At most, its petition should be deferred pending the Commission's Section 706 proceeding, which the Commission indicated that it would take up later this year. Under that proceeding, the Commission can appropriately address the ways in which it can encourage the deployment of advanced telecommunications services to elementary and secondary schools consistent with its overarching statutory mandate to pry open the local markets to

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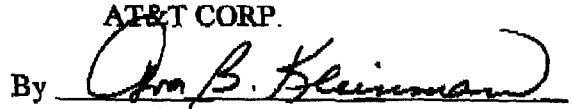
Reform Proceeding and in the context of its Report to Congress to address this issue. See In the Matter of Federal-State Joint Board on Universal Service, CC Docket No. 96-45 (Report to Congress), Report to Congress, rel. April 10, 1998.

meaningful competition, and in the context of the ILECs' compliance with their statutory obligations to open their local markets so that competitors can themselves offer both traditional and advanced services.

Respectfully submitted,

AT&T CORP.

By 

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April 13, 1998

CERTIFICATE OF SERVICE

I, Rena Martens, do hereby certify that on this 13th day of April, 1998, a copy of the foregoing "Comments of AT&T Corp." was served by U.S. first class mail, postage prepaid, to the parties listed below.

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